IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO : 18698 of 2006

Dated: 25th September 2006.

Between:

M/s. Kamal Foot Wear,
Vijayawada rep. By its
Proprietor Mr.Chandra Prakash Sachdev .. Petitioner

And

The Asst. Commissioner CT (Int.)
LTU, Auto Nagar, Vijayawada .. Respondent

ORAL ORDER: (per JC,J)

Writ Petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in not issuing the `F' declarations required by the petitioner as illegal, arbitrary high handed, without authority of law and declare that the petitioner is entitled for supply of `F' Declarations under the CST Act as per the application of the petitioner dt. 17.6.2006 and the representation of the petitioner dt. 3.8.2006 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is a proprietory concern by name M/s. Kamal Foot Wear, a registered dealer under the APGST and CST Act and an assessee on the rolls of the sole respondent herein.

It appears that the petitioner requires huge quantity of rubber for use in the manufacturing process carried on by him. It is asserted in the affidavit filed in support of the writ petition that he is procuring the rubber so needed by him from the Rubber Board, a Government of India Enterprise, functioning under the Ministry of Commerce, located at Kottayam of Kerala State. Its further stated by the petitioner in the affidavit that for the purpose of securing the rubber, the petitioner appointed two firms called M/s. Thomson Traders, Kottayyam, Kerala and M/s. Brilliant Associates, Cochin, as its agents. What exactly the nature of relationship between these two firms with the petitioners is not required to be gone into for the purpose of present writ petition. In substance, the grievance of the writ petition is that the transaction as the one undertaken by the petitioner is covered under Section 6A of the CST Act. The agents of the petitioner in order to claim exemption from tax under the Central Sales Tax Act are required to produce declarations in Form F given by the petitioner. Therefore the petitioner approached the sole respondent with an application to issue the necessary Form F forms. The respondent initially did not respond to the application. Then the petitioner was constrained to approach this Court by way of WP No. 17017 of 2006. During the pendency of the writ petition, the respondent issued proceedings titled Endorsement dated 18.8.2006 and in view of the Endorsement, the said writ petition was withdrawn with liberty to approach this Court challenging the said Endorsement. Hence the present writ petition.

Heard the learned Government Pleader.

From the Endorsement, it appears that the respondent declined to issue `F'forms on the ground that some of the transactions made by the petitioner earlier were not qualified to be supported by the declarations in `F' form and therefore the respondent by the above Endorsement informed the petitioner as follows :

> "It is hereby intimated to the dealer company unless the above information furnished the statutory forms `F' forms can't be issued.
>
> Once again they are required to furnish the utilization statements of `F' forms issued in the earlier years and also `Sale Pattis' issued to respective dealers in earlier years."

Section 6A prescribes a mode of proof of the transfer of goods otherwise than by way of sale from one State to another State. The case of the petitioner is that the transaction of procurement of rubber described above is a transaction which falls within the purview of Section 6A. The question whether every transfer of every consignment of rubber procured by the petitioner in connection with his business is a transaction covered under the provisions of Section 6A or not is a matter to be decided on the facts and circumstances of each transaction and it is not possible to give any general declaration. However, if the petitioner seeks to procure the raw material – rubber against Form `F' Declaration contemplated under Section6A, the release of the forms cannot be declined by the respondent. It's a different matter whether the declaration as a matter of fact with reference to each of the transactions factually satisfies the requirements of Section 6A or not. The question will have to be examined on a transaction to transaction basis. In the event of any misuse of Form `F' declaration in connection with either a single transaction or plurality of transactions, appropriate action under the Act can always be taken by the respondent authorities. But the issuance of Form `F' in our view cannot be declined either on a conjecture that the petitioner would misuse them or even on the basis of a past misuse (assuming there was such misuse). If the benefit of Form `F' to be declined to any trader on the basis of some past misuse (if any) it can be done only by an authority of law. But, there is nothing in the statute, which authorizes the declining of issuance of Form `F' to a trader.

In the circumstances, the writ petition is allowed directing the respondents to issue the necessary Form `F' declaration to the petitioner. Such issuance is, however, without prejudice to the authority of the respondents to examine the legality of the usage of those forms subsequently.

(J.CHELAMESWAR, J)

(D.APPA RAO,J)

25th September, 2006.

Knk

Note:

CC in two days

(b/o)

knk